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Gabe S. Meyer
Assistant General Attorney

May 1, 2009

Via Electronic Filing

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

**RE: STB Docket No. AB-102 (Sub-No. 13)—Missouri-Kansas-Texas
Railroad Co.—Abandonment—In St. Charles, Warren, Montgomery,
Callaway, Boone, Howard, and Pettis Counties, MO**

Dear Secretary Quinlan:

Union Pacific Railroad Company ("UP") hereby responds to the comments ("Comments") of the City of Boonville (the "City"), filed on April 17, 2009 in this matter.

In its Comments, the City voices its support for the March 12, 2009 Motion filed by the Rails to Trails Conservancy, the Save the Katy Bridge Coalition, Inc., and the Missouri Parks Association (collectively "Petitioners"). In their Motion, Petitioners requested that the Board assume responsibility for the historic review of the Boonville Bridge, which is being conducted by the U.S. Coast Guard. In its March 25 response, UP explained that the Coast Guard is the proper agency to conduct the historic review and that there is no reason for the Board to intervene.

The City does not offer any new evidence to justify Board intervention. Although the City repeatedly cites *Pit River Tribe v. U.S. Forest Service*¹ in support of its position, the decision has very little bearing on this matter. In its decision, the Court concluded that because no federal agencies had conducted proper historic and environmental reviews required for construction of a geothermal plant, construction could not proceed. The Court reaffirmed that federal agencies must conduct appropriate historic and environmental reviews of projects subject to their oversight.

Here, the Coast Guard and U.S. Army Corps of Engineer are respectively conducting historic and environmental reviews. As UP has previously explained, they

¹ *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768 (9th Cir 2006).

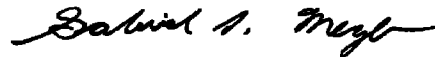
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are the appropriate agencies to conduct the reviews and they have conducted them properly. The City does not offer any evidence to the contrary.

Additionally, the City asks the Board to ensure the Boonville Bridge's "retention intact for the benefit of the local community and the State of Missouri." In effect, the City asks the Board to strip UP of its rights to its bridge, while making no offer to compensate UP for it. The Board cannot grant such relief. As it has previously recognized, "The Board does not have the power to force a railroad to sell (or donate) its property Any attempt to . . . force a railroad to sell (or donate) property for a non-rail purpose, as a condition to obtaining abandonment authority, would plainly constitute an unauthorized taking under the Fifth Amendment."²

Accordingly, UP again respectfully requests that the Board deny Petitioners' Motion.

Sincerely,



Gabriel S. Meyer
Assistant General Attorney

² *Consolidated Rail Corp.—Abandonment Exemption—Lancaster and Chester Counties, PA*, STB Docket No. AB-167 (Sub-No 1095X), STB served Oct. 20, 2003 at 8.

CERTIFICATE OF SERVICE

I, Gabriel S. Meyer, certify that on this 1st day of May, 2009, I caused a copy of the above filing in STB Docket No. AB-102 (Sub-No. 13) to be served upon the following parties via first class U.S. mail:

Fritz R. Kahn
Frit R. Kahn, P.C.
1920 N Street, NW
Eighth Floor
Washington, DC 20036

Bruce A. Morrison
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, MO 63101-2208

James R. Layton
State Solicitor
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102

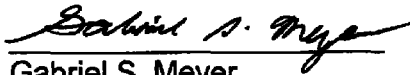
Roger K. Wiebusch
Bridge Administrator
United State Coast Guard
1222 Spruce Street
St. Louis, MO 63103-2832

Dale Reesman
Lead Attorney for the City of Boonville
Williams Reesman & Tate
527 East High Street
Boonville, MO 65233

Andrea Ferster
General Counsel
Rails to Trails Conservancy
2121 Ward Ct., NW
Washington, DC 20037

Megan McGuire
Co-Counsel for the City of Boonville
City Counselor
525 East Spring Street
Boonville, MO 65233

Charles H. Montange
Attorney at Law
426 NW 162nd Street
Seattle, WA 98177


Gabriel S. Meyer